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February 8, 2008

Ms. Marlene Dortch
 Office of the Secretary
 Federal Communications Commission
 445 12th Street, S. W.
 Washington, DC 20554

In the Matter of:
 Federal-State Joint Board on Universal Service
 TRACFONE WIRELESS, INC.
 Petition for Designation as an Eligible
 Telecommunications Carrier in the Commonwealth
 of Pennsylvania
 CC Docket No. 96-45

Dear Ms. Dortch:

Enclosed for filing please find Joint Comments of the Pennsylvania Office of Consumer Advocate and the National Emergency Numbers Association, Keystone Chapter in the above-referenced matter. ~~Please also note that these Joint Comments have been filed with the Commission electronically.~~

Please indicate your receipt of this filing on the additional copy provided and return it to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

Barrett C. Sheridan
 Assistant Consumer Advocate

Enclosure
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Commonwealth of Pennsylvania :

JOINT COMMENTS OF
THE PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE
AND THE NATIONAL EMERGENCY NUMBERS ASSOCIATION,
KEYSTONE CHAPTER

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Secretary, Keystone (PA) State Chapter
National Emergency Number Association

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I. INTRODUCTION

On January 9, 2008, the Federal Communications Commission's (FCC) Wireline Competition Bureau requested comments regarding the TracFone Wireless, Inc. (TracFone) Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, as filed by TracFone on December 11, 2007 (PA ETC Petition). TracFone is a reseller of wireless service in Pennsylvania. TracFone requests designation as an Eligible Telecommunications Carrier (ETC) in Pennsylvania so that TracFone may offer reduced cost prepaid wireless calling service to Lifeline eligible consumers. TracFone's Petition notes that on September 8, 2005 the FCC granted TracFone's separate Petition for Forbearance subject to

certain conditions.¹ TracFone states that it “meets all the statutory and regulatory requirements for designation as an ETC” in Pennsylvania and asks the FCC to find that grant of its Petition for Designation is in the public interest.

The Pennsylvania Office of Consumer Advocate (PA OCA) represents the interests of Pennsylvania telecommunications consumers at both the state and federal level.² The Keystone State Chapter of the National Emergency Number Association (Keystone NENA) is an organization of Public Safety Answering Points (PSAP) personnel in Pennsylvania. Keystone NENA promotes networking, training, and legislative initiatives to improve the process and delivery of emergency services, including 911 and enhanced 911 (E911) calling.

Through its Petition, TracFone proposes to use Lifeline support from the federal Universal Service Fund to make telephone service more available and affordable to Lifeline eligible Pennsylvanians. TracFone states that this will promote public safety as each Lifeline customer will have access to 911 and E911 calling. PA OCA and Keystone NENA agree that Pennsylvania low income consumers may benefit from more choice and access to telephone service, consistent with federal universal service goals. However, the PA OCA and Keystone NENA submit that approving TracFone’s Petition without appropriate conditions may not further these goals. Importantly, TracFone has resisted fulfilling its obligations under Pennsylvania law to collect Wireless E-911 fees from its prepaid wireless customers, reducing the pool of funds for support of Pennsylvania PSAPs. Granting TracFone the use of federal Universal Service Funds to increase the number of prepaid wireless customers in Pennsylvania without conditions may have the unfortunate consequence of reducing support for the vital PSAP operations which serve

¹ In the Matter of Federal-State Joint Board on Universal, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(a) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, 20 FCC Rcd 15095 (rel. Sept. 8, 2005) (“TracFone Forbearance Order”).

² See 71 P.S. § 309-4.

all Pennsylvania consumers. Customers of wireline and other wireless carriers do pay 911 surcharges to support PSAP operations. The gain to consumers of adding TracFone as a choice for Lifeline-supported calling service in Pennsylvania may not serve the public interest, if such gain is built on lack of parity and equity in the collection of 911 recovery fees necessary to support 911 service in general and wireless E911 in particular.

The PA OCA and Keystone NENA submit that the FCC should condition the grant of TracFone's petition for designation as an ETC in Pennsylvania upon a commitment by TracFone to satisfy its obligation under Pennsylvania law to collect and remit 911 recovery fees for the support of PSAP operations as part of TracFone's commitment to advance access to 911 and E911 service. This condition is necessary to assure that grant of TracFone's Petition will promote universal service in a balanced way and satisfy the public interest by maintaining funding for 911 and E911 operations.

II. COMMENTS

A. TracFone Should Commit to Promote Public Safety by Providing Both Access to 911 and E911 Calling for Lifeline Customers and to Cooperate in Supporting PSAP Operations, as Required by Pennsylvania Law

TracFone's request for designation by the FCC as a competitive ETC for Lifeline in Pennsylvania has required two filings, a Petition for Forbearance from the Section 214(e) provision which would otherwise exclude pure resellers from designation, and its present PA ETC Petition. The FCC granted TracFone's Petition for Forbearance subject to certain conditions in September 2005. TracFone filed a Compliance Plan with the FCC on October 11, 2005. TracFone's PA ETC Petition incorporates TracFone's Compliance Plan and the commitments made by TracFone in certain ex partes with FCC staff. As explained below,

however, TracFone's current PA ETC Petition should not be found to be in the public interest without a commitment by TracFone to not only provide access to 911 and E911 service for its Lifeline customers but also to support the operation of Pennsylvania PSAPs through collection of 911 recovery fees from TracFone's customers.

The FCC has set forth its framework for review of petitions for ETC designation in a March 2005 Report and Order.³ According to the FCC's ETC Designation Order, the FCC will consider whether TracFone has committed to provide the core services supported by the Universal Service Fund and whether such grant is in the public interest. The FCC will look for specific commitment by the ETC to objective consumer protection measures and service quality standards.⁴ State consumer protection standards may apply even to wireless ETCs, so long as they are imposed for cause.⁵ The state requirements must relate to advancement of universal service.⁶ In examining whether grant of the ETC petition will serve the public interest, the FCC will examine "(1) the benefits of increased consumer choice, (2) the impact of the designation on the universal service fund, and (3) the unique advantages and disadvantages of the competitor's service offering."⁷

Based on information available to PA OCA and Keystone NENA, the unconditional grant of TracFone's PA ETC Petition may not provide sufficient consumer protection and serve the public interest. Pennsylvania's Public Safety Emergency Telephone Act

³ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (rel. Mar. 17, 2005) at ¶ 28 ("ETC Designation Order"). See TracFone PA ETC Petition at 21.

⁴ Id. ¶ 28.

⁵ Id. ¶ 30.

⁶ Id.

⁷ Id. ¶ 18.

(Public Safety Act)⁸ establishes the framework for funding of Pennsylvania PSAP operations in part through fees charged to wireline and wireless telephone customers. All wireline customers in Pennsylvania have to stay current with payments for local calling, 911 recovery fees and telephone relay service in order to maintain basic local service.⁹ The Pennsylvania Act requires prepaid wireless customers to pay the Wireless E-911 surcharge for each month of service.¹⁰ Under the Public Safety Act, the wireless provider is required to collect the surcharge and remit the money, minus 2% of gross receipts to cover administrative costs, to the Wireless E-911 Emergency Fund.¹¹ This Wireless E-911 Emergency Fund in turn pays PSAPs' and wireless carriers' costs of complying with the FCC's E-911 Order.¹²

In the experience of Keystone NENA, all wireline local exchange carriers, competitive local exchange carriers and resellers, as well as wireless service providers, comply with the Pennsylvania Act and collect 911 fees – except TracFone. Keystone NENA notes that in October 2004 and January 2005, TracFone remitted funds to support 911 service in Pennsylvania. However, TracFone ceased remitting funds thereafter. TracFone presented its

⁸ 35 P.S. § 7011, et seq. (as amended, eff. March 29, 2004); see 35 P.S. § 7012 (definition of 'contribution rate'), 35 P.S. § 7021.4 (b) "Wireless E-911 surcharge."

⁹ See 52 Pa.Code § 64.102. The Pennsylvania Public Utility Commission defines "basic service" as "[t]he transmission of messages or communications by telephone between points within a local calling area as established in the tariff of an LEC, including installation service, providing and restoring access lines, touch tone service and handling of unpaid checks as addressed in § 64.11 (relating to method of payment). The term includes charges for 911 service, telecommunications relay service and subscriber line service, but does not include premise visits for installation of new service." (emphasis added)

¹⁰ Subpart (b)(4) of Section 7021.4 provides:

In the case of prepaid wireless telephone service, the monthly wireless 911 surcharge imposed by this section shall be remitted based upon each prepaid wireless account in any manner consistent with the provider's existing operating or technological abilities, such as customer address, location associated with the MTN [mobile telephone number], or reasonable allocation method based upon comparable relevant data and associated with Pennsylvania, for each wireless customer with an active prepaid wireless account and has a sufficient positive balance as of the last day of each month, if such information is available.

¹¹ 35 P.S. § 7021.4(b), (d). The Wireless E911 Surcharge fees collected are not taxable wireless revenue. The amount of the surcharge is fixed at \$1.00 per month for each device that provides wireless service.

¹² 35 P.S. § 7021.4(a).

position that point-of-sale vendors should collect and remit 911 recovery fees at a National Association of State 9-1-1 Administrators (NASNA) conference on October 31, 2007. In response, NASNA adopted a “Resolution on Application of 911 Service Charges and Taxes to Prepaid Wireless Communications Services” by unanimous vote on November 1, 2007. NASNA resolved that “state legislatures should determine which method is most appropriate for applying 9-1-1 service charges and taxes to wireless communications services, including prepaid wireless,” that NASNA “disagrees with TracFone that only one such method for prepaid providers, retail point-of-sale collection, is appropriate,” and “NASNA emphasizes that all prepaid providers, including TracFone, must comply with applicable state laws.”

The FCC should consider whether grant of TracFone’s petition, in this proceeding, without TracFone’s commitment to collect funds necessary to PSAPs, is in the public interest and advances universal service, including access to modern and continuous 911 and E911 service. Based on available information, unconditional grant of TracFone’s petition may result in inequity where some wireline and wireless consumers, including Lifeline customers of other ETCs, would pay 911 fees to support PSAP services – but not TracFone’s prepaid wireless customers including Lifeline customers.

The FCC has already directed TracFone to make its presence known to each PSAP where it would offer Lifeline service as part of condition (d) of the Forbearance Order.¹³ Even if TracFone’s alternative plan to certify that Lifeline customers have access to 911 and E911

¹³ The FCC granted TracFone’s petition for forbearance conditioned on TracFone “(a) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; ... (d) obtaining a certification from each Public Safety Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone complies with condition (a)...” TracFone Forbearance Order ¶¶ 6, 16.

service, without direct contact with individual PSAPs, is acceptable,¹⁴ the FCC should still require TracFone to comply with the Pennsylvania Public Safety Act which directs TracFone, as a provider of prepaid wireless service, to support Pennsylvania PSAP operations through collection of the Wireless E-911 Surcharge. Otherwise, TracFone's plan may make it difficult for Pennsylvania to fairly and equitably collect from all telephone consumers, wireline and wireless alike, the costs of supporting the PSAP operations which make 911 and E911 services possible.

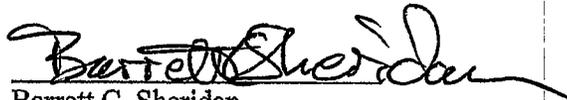
PA OCA and Keystone NENA support affordable telephone service for low income consumers so that they may have access to 911 and E911 calling service. At present, TracFone proposes to provide Pennsylvania Lifeline eligible consumers with that access, but TracFone's commitment to support wireless E911 and PSAP operations is in doubt. The FCC should require TracFone to commit to comply with the Pennsylvania Safety Act as a condition of the grant of TracFone's petition to offer Lifeline service as a competitive ETC in Pennsylvania. The Pennsylvania statute is directly related to the promotion of public safety and operation of 911 and E911 services, consistent with universal service goals. Compliance will result in parity for the benefit of all consumers and allow TracFone's PA ETC Petition to be granted as in the public interest.

¹⁴ TracFone has expressed a willingness to meet the spirit of the FCC's condition (d) but not the letter. See TracFone Compliance Plan filed October 11, 2005 at 4-10. According to TracFone "[s]trict compliance with [the] requirement to get PSAP certification re 911/E911 compliance for every market where TracFone would offer Lifeline service would be cost prohibitive, duplicative, and unnecessary." TracFone October 3, 2005 Ex Parte, "Plan for Complying with FCC's 911 and E911 Certification Conditions for Lifeline" at 1; see also Compliance Plan at 3. TracFone suggests that direct contact with individual PSAPs would not provide better information as the PSAP could only certify whether the underlying carrier had deployed E911. *Id.* at 9. Additionally, a "PSAP would have no direct knowledge about whether TracFone is providing service over a particular carrier's network and would have to rely on TracFone's representation that it is utilizing a carrier's service." *Id.* TracFone proposed to not have direct contact with PSAPs but instead rely on the underlying carriers' certification of 911 and E911 availability. *Id.* at 9-10.

III. CONCLUSION

Designation of TracFone as an ETC to offer Lifeline in Pennsylvania is not in the public interest, unless it is conditioned on a positive commitment by TracFone to satisfy its state statutory obligation to collect and remit 911 recovery fees. No other outcome can fairly balance the goals of universal service and promote public safety for the benefit of both low income and other Pennsylvania consumers.

Respectfully submitted,



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In the Commonwealth of Pennsylvania :

I hereby certify that I have this day served a true copy of the foregoing document, Joint Comments of the Pennsylvania Office of Consumer Advocate and the National Emergency Numbers Association, Keystone Chapter, upon parties of record in this proceeding.

Dated this 8th day of February, 2008.

Respectfully submitted,



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